

MAINE STATE LEGISLATURE

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(EMERGENCY)
New Draft of: H. P. 585, L. D. 712

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1836

H. P. 1638

House of Representatives, June 2, 1977

Reported by a Majority from Committee on Education and printed under
Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to Special Education Tuition and Board.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the experiences of the past year have demonstrated that it is impossible to project accurately the number of students needing special education programs which require tuition and board expenditures; and

Whereas, based on the experience of the past year, it is impossible to project the number of state wards or the number of students who are voluntarily committed to the state's custody, who are in need of special education tuition and board placement; and

Whereas, based on the experience of the past year, it is impossible to project the number of students moving into Maine who are in need of special education programs; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 20 MRSA § 3121, as repealed and replaced by PL 1975, c. 732, § 2, is repealed and the following enacted in its place:

§ 3121. Policy and purpose

1. Equal educational opportunities. It is the declared policy of the State that all children be provided with equal educational opportunities. The purpose of this chapter is to insure that all administrative units operating schools provide equal educational opportunities for all exceptional children, as defined. Educational opportunities for such children shall be provided by means of the addition of appropriate supportive assistance to regular educational programs.

2. Least restrictive educational alternative. It is the policy of the State that exceptional children be educated with children in regular programs to the maximum extent possible. Removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplemental aids and services, or education in self-contained classes within the regular school program, cannot be satisfactorily accomplished. Placement of exceptional children in residential schools or institutions or in private day schools or programs shall be authorized only after supporting evaluative data justifying such placement have been submitted to and approved by the commissioner.

Sec. 2. 20 MRSA § 3125, sub-§§ 1 and 2, as repealed and replaced by PL 1975, c. 732, § 2, are repealed and the following enacted in their place:

1. Local programs; approval. An appropriate program for exceptional children may be established by any administrative unit operating schools. The program shall be approved by the commissioner with respect to requirements for admission, qualification or certification of staff, plan of instruction, adequacy of facilities and supportive services, professional supervision and teacher-student ratio.

2. Contractual programs; approval. An administrative unit may arrange with or tuition to another administrative unit or any public or private school, agency or institution for the education of exceptional children. Any program for exceptional children offered by a public or private school, agency or institution shall be approved by the commissioner with respect to the components listed in subsection 1. If arrangements are effected with a public or private school, agency or institution, they shall be in accordance with guidelines and regulations established by the commissioner and shall be described in a contract which shall be subject to approval in advance by the commissioner.

Sec. 3. 20 MRSA § 3125, sub-§§ 5 and 6 are enacted to read:

5. Residential care facilities. A special education facility may be operated in conjunction with or as a part of other agencies, institutions or facilities licensed by the State to provide education, emotional or mental health services, alcohol or drug rehabilitation, boarding care or other child care services to persons between the ages of 5 and 20, including without limitation the following: Facilities for children and adults under Title 22, chapter 1661; community mental health centers under Title 34, chapter 183; approved facilities for alcohol treatment under Title 22, chapter 1601; and residential drug abuse treatment facilities under Title 22, chapter 1601.

6. Contractual programs for nonresident children. Any other state or subdivision thereof, or any private person, firm or agency may contract with any private school in this State to provide special education for children who are not residents of this State. Any program for such nonresident children shall be approved by the commissioner only with respect to the components listed in subsection 1.

Sec. 4. 20 MRSA § 3130, sub-§ 2, as enacted by PL 1975, c. 732, § 2, is repealed and the following enacted in its place:

2. Private school tuition. The commissioner shall approve all tuition rates charged for special education programs by private schools, agencies or institutions.

A. The tuition rates charged by private schools, agencies or institutions which serve exceptional children exclusively shall not exceed the actual per pupil cost incurred in the operation during the preceding school year. Allowable expenditures used to determine the per pupil cost shall be defined in guidelines and regulations established by the commissioner. Financial reports detailing the allowable expenditures and the computation of the tuition rate shall be filed by July 15th of each year, in such form as the commissioner may require, by each such special purpose school, agency or institution.

Increases in the tuition rate charged by such private schools, agencies or institutions from one year to the next may not exceed 15% unless evidence is presented to the commissioner that a hardship will exist if a higher rate of increase is not approved, and such evidence is deemed sufficient by the commissioner.

B. The tuition rates charged by general purpose private schools, agencies or institutions that offer special education programs shall not exceed the state elementary or secondary per pupil tuition rates as computed under sections 912 and 1292.

C. The commissioner shall establish a tuition rate for new special education programs in special purpose private schools based on the estimated allowable costs of such schools.

D. This subsection shall apply only to tuition which this State pays, reimburses or otherwise assists in funding in whole or in part.

Sec. 5. 20 MRSA § 3130, sub-§ 3, is enacted to read:

3. Tuition for nonresident children. The provisions for this section shall not apply to and the commissioner shall have no regulatory authority over tuition rates charged for special education programs by private schools, agencies or institutions in cases where such tuition is not paid, reimbursed or otherwise funded, in whole or in part, by this State.

Sec. 6. 20 MRSA § 3744, sub-§ 1, ¶ D, as enacted by PL 1975, c. 660, § 2, is amended to read:

D. Special education tuition and board, excluding medical costs defined as follows:

- (1) Tuition and board for pupils placed by administrative units;
- (2) Tuition and board for state wards and other pupils placed directly by the State in accordance with rules and regulations adopted by the Department of Educational and Cultural Services; and
- (3) Adjustments under section 3748, subsection 3, paragraph G.

Sec. 7. 20 MRSA § 3745, 2nd ¶, 1st and 2nd sentences, as repealed and replaced by PL 1975, c. 746, § 24-E, are repealed and the following enacted in their place:

The requested funding levels for section 3744, subsection 1, paragraph C; paragraph D, subparagraph (1); and paragraphs E and F and the requested funding level of the insured value factor and leases under paragraph G shall be computed by adding the actual costs for the first half of the year immediately prior to the year of allocation of funds to the total estimated costs that will be incurred for the 2nd half of the same year. The requested funding levels of section 3744, subsection 1, paragraph D, subparagraphs (2) and (3), shall be computed by estimating those costs in the year of allocation of funds.

Sec. 8. 20 MRSA § 3747, sub-§ 3, ¶ D, as enacted by PL 1975, c. 660, § 2, is repealed and the following enacted in its place:

D. Special education tuition and board, excluding medical costs defined as follows:

- (1) Tuition and board for pupils placed by administrative units;
- (2) Tuition and board for state wards and other pupils placed directly by the State in accordance with rules and regulations adopted by the Department of Educational and Cultural Services; and
- (3) Adjustments under section 3748, subsection 3, paragraph G.

Sec. 9. 20 MRSA § 3747, sub-§ 6, last sentence, as repealed and replaced by PL 1975, c. 754, § 2, is repealed and the following enacted in its place:

The Legislature shall appropriate 90% of the amounts established for subsection 3, paragraph C; paragraph D, subparagraphs (1) and (3); paragraph F, subparagraph (1) and subsection 4. The Legislature shall appropriate 100% of the amounts established for subsection 3, paragraph D, subparagraph (2).

Sec. 10. 20 MRSA § 3748, sub-§ 1, ¶ C, sub-¶ (1) 2nd ¶, 2nd sentence, as repealed and replaced by PL 1975, c. 746, § 24-H, is amended to read:

Special education tuition and board shall be reimbursed in the year of allocation for state wards and other pupils placed directly by the State shall be paid by the State in the year of allocation at 100% of the actual cost.

Sec. 11. 20 MRSA § 3748, sub-§ 1, ¶ C, sub-¶ (1), 2nd ¶, as last repealed and replaced by PL 1975, c. 746, § 24-H, is amended by adding at the end the following new sentence:

In the state's fiscal year 1979, an administrative unit's state subsidy for special education tuition and board shall be based on the number of special education students which that unit was responsible for in fiscal year 1978, or the number of such students which that unit is responsible for in fiscal year 1979, or whichever number is less.

Sec. 12. 20 MRSA § 3748, sub-§ 3, ¶ G, is enacted to read:

G. If the parents of a special education pupil change residence within the State at any time during the year, then the commissioner shall adjust the special education tuition and board estimates of the affected administrative units. If a unit petitions the commissioner and demonstrates that the tuition or board payments to a special education facility for the initial placement of an exceptional child by an administrative unit will cause that unit to exceed its total budgetary limitation, the commissioner may adjust the unit's allocation to include up to 90% of the amount of the tuition and board payments. The funds for such adjustment shall be limited to the amount appropriated by the Legislature under section 3747, subsection 6. School committees and boards of school directors shall be authorized to expend the funds allocated, notwithstanding any other statute. The commissioner is authorized, notwithstanding any other statute, to obtain expenditures and estimates of expenditures from the administrative units for the purpose of making necessary adjustments to the special education cost estimates for the state's fiscal year 1977.

Sec. 13. 20 MRSA § 3748, sub-§ 13 is enacted to read:

13. Reimbursement for special education. The commissioner is authorized to make tuition and board payments directly to private special education boarding schools which receive state wards or other pupils placed directly by the State.

Sec. 14. Expenditures. For the year beginning July 1, 1977, and ending June 30, 1978, the commissioner is authorized to expend any balances in funds appropriated for special education tuition and board in order to reimburse any unit in which the actual expenditures for special education tuition and board have exceeded the unit's estimated costs as adjusted by the commissioner.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect for subsidy purposes when approved, except section 7 which shall take effect on July 1, 1978.

STATEMENT OF FACT

The purposes of this amendment are to:

1. Change the funding for special education tuition and board from reimbursement on a year of allocation basis to reimbursement on a year prior to year of allocation basis. This change will be implemented July 1, 1978;

2. Authorize the commissioner to use any balances which may appear in the special education tuition and board account to reimburse any unit in which actual expenditures have exceeded the estimate;
3. Permit facilities which are licensed to provide education, emotional or mental health services, alcohol or drug rehabilitation services, boarding care or other child care services to persons between 5 and 20 to operate special education programs;
4. Permit any other state or subdivision to contract with any private school in Maine to provide special education for nonresident children; and
5. Limit the tuition rates charged by private schools, agencies and institutions to the state elementary or secondary per pupil tuition rates.